

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
K. Rupert Murdoch)	File No. BTCCT-20050819AAF, <i>et al.</i>
(Transferor))	
)	
and)	
)	
Fox Entertainment Group)	
(Transferee))	
)	
Applications for Transfer of Control of)	
Fox Television Stations, Inc.)	

MEMORANDUM OPINION AND ORDER

Adopted: August 15, 2006

Released: October 6, 2006

By the Commission: Chairman Martin and Commissioner McDowell issuing separate statements at a later date; Commissioners Copps and Adelstein dissenting and issuing separate statements at a later date.

1. The Commission has before it for consideration the unopposed applications filed on FCC Form 314 for authority to transfer control of Fox Television Stations, Inc. (FTS) from K. Rupert Murdoch to Fox Entertainment Group, Inc. (FEG).¹ In conjunction with their applications, the applicants request the following: waiver of the newspaper/broadcast cross-ownership prohibition to permit the continued ownership of WWOR-TV, Secaucus, New Jersey, WNYW(TV), New York, New York and *The New York Post*;² and waiver of the local ownership rule for station KFCT(TV), Fort Collins, Colorado to continue to operate as a satellite of station KDVR(TV), Denver, Colorado.³ For the reasons set forth herein, we grant these applications to transfer control. As discussed further below, we also grant applicants' request for waiver of the local ownership rule and grant applicants a permanent waiver of the newspaper/broadcast cross-ownership prohibition to permit continued ownership of *The New York Post* and WNYW(TV), and a temporary waiver of the newspaper/broadcast cross-ownership prohibition to permit continued ownership of *The New York Post* and WWOR-TV.

I. BACKGROUND

2. According to the applicants, FTS is a wholly-owned subsidiary of Fox Television Holdings, Inc. (FTH). Mr. Murdoch owns 100 percent of FTH's issued and outstanding Preferred Stock (7600 shares) and FEG owns 100 percent of FTH's issued and outstanding Common Stock (2400 shares). Through its

¹ A list of the stations affected by the transfer and the associated file numbers is attached as Exhibit A.

² See Section 73.3555(d) of the Commission's Rules, 47 C.F.R. §73.3555(d).

³ See Section 73.3555(b) & (c), n.5 of the Commission's Rules, 47 C.F.R. §73.3555(b) & (c), n.5.

stock ownership, FEG is entitled to all of the equity in FTH, less a fixed-return equity interest held by Mr. Murdoch. This fixed-return equity interest entitles Mr. Murdoch to a fixed return at the rate of 12 percent per annum on his paid-in capital of \$760,000 (*i.e.*, \$91,200 per year) and, in the event of dissolution, an ultimate redemption of his shares for a fixed sum of \$760,000.

3. Currently, each share of FTH's Preferred Stock and each share of its Voting Stock is entitled to one vote for all purposes. Therefore, Mr. Murdoch personally controls FTH through his 76 percent voting interest, while FEG maintains a 24 percent voting interest. The applicants propose to recapitalize the stock so that each share of Preferred Stock will be entitled to .055 of a vote for all purposes and each share of Common Stock will be entitled to one vote for all purposes. That would reduce Mr. Murdoch's voting interest from 76 percent to 14.8 percent while increasing FEG's voting interest in FTH from 24 percent to 85.2 percent.

4. FEG is a wholly-owned subsidiary of News Corporation (News Corp.).⁴ Mr. Murdoch is the Chairman, Chief Executive Officer and a director of News Corp. and has a 29.5 percent voting interest in News Corp.⁵ In addition, Mr. Murdoch has the power to appoint all of the eight directors of Cruden Financial Services, LLC, which holds 28.5 percent of the voting interest in News Corp. Four of those eight appointees must be the designees of Prudence MacLeod, Elisabeth Murdoch, Lachlan Murdoch, and James Murdoch. Applicants state that the recapitalization of FTH will not change any of the voting arrangements in News Corp. They also state that no new party will acquire any voting rights or equity in FTH, FEG or News Corp. The application reflects that the existing owners of FTH – Mr. Murdoch and FEG – will remain in control of the company, and no new media ownership combination will arise as a result of these transfers. Further, the applicants maintain that the proposed recapitalization is without any discernible or meaningful change in the control or operation of the broadcast properties. Finally, the applicants state that the purpose of the proposed transaction is to effectuate a proposed recapitalization of the company in order to reduce corporate complexity, yield operational efficiencies and financial savings and free capital to ultimately sustain and improve levels of service it provides the public.

II. DISCUSSION

5. Because the parties seek the authority for this transaction on FCC Form 314, commonly referred to as a "long-form" application, our review includes a *de novo* review of any multiple ownership waivers held by the transferor. Such a review is required because multiple ownership waivers apply to a particular licensee as constituted at the time the waiver is granted and do not automatically accrue to a new licensee who represents a new ownership combination.⁶ Our evaluation to continue the waivers therefore includes a determination of whether the desired public interest benefits have resulted from the past waivers and justify their extension in this case.

6. In the case of the newspaper/broadcast cross-ownership prohibition, the Commission has recognized the need for waiver of the rule in certain circumstances.⁷ In the case of the waivers held by

⁴ News Corp. was formerly News Corporation Limited, an Australian Company. It was reincorporated as News Corporation (News Corp.), an American company, on November 12, 2004 as part of a corporate reorganization.

⁵ The Commission has never made any finding as to whether Mr. Murdoch exercises control over News Corp. *See, e.g., Fox Television Stations*, 11 FCC Rcd 7773, 7775 (1996). For the reasons stated above, we need not address that here.

⁶ *See, e.g., Stauffer Communications, Inc. and Morris Communications Corp.*, 10 FCC Rcd 5165 (1995).

⁷ When it adopted the television/newspaper cross-ownership ban, the Commission foresaw the need to consider waivers where: (1) a licensee is unable to sell a station; (2) the only sale possible would be at an artificially (continued....)

FTS and News Corp. to permit common ownership of WNYW(TV), WWOR-TV and *The New York Post*, the Commission has found that the combined “special circumstances” of preserving the on-going viability of the newspaper in tandem with the diversity and competitiveness of the New York City market justified grant of the permanent rule waiver for ownership of WNYW(TV) and *The New York Post*, and grant of the temporary rule waiver for ownership of WWOR-TV and *The New York Post*.⁸ In 2004, FTS and News Corp. filed a petition asking the Commission to modify the permanent waiver to also include common ownership of WWOR-TV or, at a minimum, to extend the temporary waiver with regard to WWOR-TV pending conclusion of the remand of the 2002 biennial review proceeding. FTS incorporated this petition into the captioned transfer applications. The petition explains how the permanent WNYW(TV)/*New York Post* waiver saved the newspaper from extinction and preserved a unique and diverse media voice (as well as hundreds of jobs). It describes how the waiver permitted News Corp. to invest in an expansion of the newspaper by adding a Sunday edition and build a \$300 million state-of-the-art plant in the economically depressed South Bronx area. Finally, it also demonstrates how New York City – the nation’s largest media market – is astoundingly diverse and competitive with over 18 independently-owned television stations, nearly 150 independent owners of commercial and noncommercial radio stations and 30 daily newspapers, and that the proposed waiver would not materially harm competition in that market. In the petition, applicants argue that continued uncertainty with regard to the repeal of the newspaper/broadcast cross-ownership prohibition has placed FTS in a position where it “cannot rationally continue to invest in the future of *The Post*” without the regulatory certainty that would result from modifying the permanent waiver to include WWOR-TV or extending its temporary waiver with respect to that station.

7. We find that waivers of Section 73.3555(d) of the Rules to permit the operation of WNYW(TV), WWOR-TV and *The New York Post* are warranted. As noted, the existing waivers permitting the common ownership of WNYW(TV), WWOR-TV and *The New York Post* were granted primarily to preserve the operation of the newspaper after concluding that the public would benefit from preservation of the newspaper and that competition in the subject market would not be adversely affected. The demonstrable public interest benefits that have resulted from the common ownership of these media properties have justified the existing waivers. There is nothing before us to indicate that the competitive nature of the market or that the benefit to the public resulting from common ownership of these media properties have changed sufficiently to revisit the conclusions underlying the grant of those waivers. The Commission last examined *The New York Post*’s condition when it approved FTS’ acquisition of WWOR-TV and granted a temporary waiver allowing common ownership of WWOR-TV and *The New York Post*. At that time, *The New York Post* covered 5.3% of New York households on any given day, and accounted for less than 4% of advertising revenues among the top 5 newspapers. Four years later, that condition had only improved marginally. *The New York Post* covered only 7.3% of New York households and accounted for only 6.3% of advertising revenues among the top 5 newspapers. By contrast, the top-ranked newspaper, *The New York Daily News*, covered 9.2% of households and received 18.1% of advertising revenues, and the second-ranked *New York Times* covered 8.4% of households while

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depressed price; (3) the locality cannot support separate ownership and operation of the newspaper and broadcast station; or (4) for whatever reason, the purposes of the rule would be disserved by its application. See *Multiple Ownership – Second Report and Order in Docket No. 18110*, 50 FCC 2d 1046, 1084-85, *recon.* 53 FCC 2d 589 (1975), *aff’d sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

⁸ See *Fox Television Stations, Inc.*, 8 FCC Rcd 5341(1993), *aff’d sub nom. Metropolitan Council of NAACP Branch v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995)(granting a permanent waiver of the rule); and *Applications of UTV of San Francisco Inc., et al. (Assignor) and Fox Television Stations, Inc. (Assignee)*, 16 FCC Rcd 14975 (2001)(granting a temporary 24-month waiver of the rule with respect to WWOR-TV). To the extent that FTS has other requests for extension of the temporary waiver for WWOR-TV pending before the Commission, those requests remain pending.

receiving 37.9% of advertising revenues. As noted above, the parties have indicated that the proposed recapitalization will ultimately yield smoother and more efficient corporate operation which will lead to significant cost reductions and other savings that they maintain will accrue to the benefit of both its shareholders and the public by freeing capital for other purposes without any reduction in current levels of service currently provided.

8. As discussed above, the Commission previously granted a permanent waiver of the newspaper/broadcast cross-ownership rule to permit combined ownership of WNYW-TV and *The New York Post*.⁹ The record indicates that the conditions justifying that original waiver, the financial vulnerability of *The New York Post* and the unique diversity of the New York market, still exist. Therefore, we find that grant of a permanent waiver to permit the continued ownership of WNYW(TV) and *The New York Post* is warranted. In addition, we believe that a temporary waiver of the rule to permit continued ownership of WWOR-TV and *The New York Post* for 24 months is appropriate and in the public interest. This waiver should provide sufficient certainty to assure that FTS and News Corp. will continue to take appropriate action or expend necessary capital to preserve and expand *The New York Post* without a concern that it would have to forfeit that investment by closing the newspaper or by a forced sale of a media interest at an artificially depressed price to achieve compliance with the multiple ownership rules. In other words, we will act appropriately to ensure that the very purpose of the rule – to preserve competition and existing service to the public – is not disserved by a forced divestiture under these circumstances in a market more than sufficiently competitive to withstand the harms the rule was designed to prevent.

9. Similarly, we find that waiver of the local ownership rule to permit KFCT(TV), Fort Collins, Colorado, to operate as a satellite of KDVR(TV), Denver, Colorado, is warranted. In *Television Satellite Stations*, 6 FCC Rcd 4212, 4215 (1991) (subsequent citations omitted), the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station. *Id.* at 4213-14. If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval. *Id.* at 4212. As the Commission found earlier, there is no City Grade overlap between KFCT(TV), Fort Collins, Colorado and its parent, KDVR(TV), Denver Colorado. Also, the Fort Collins area continues to be "underserved" since KFCT(TV) is the only television station licensed to that community. Finally, since this transfer of control involves a reallocation of voting rights among existing shareholders, we find that the third criterion (efforts to sell to an out-of-market buyer) is not applicable here.

10. Finally, we note that several of the stations that are the subject of these applications have pending renewal applications. Because the transaction involves a reallocation of voting rights among existing shareholders and no new parties will gain an interest in the licensee, we believe, based on the limited circumstances outlined above, that it is appropriate to grant these long-form applications during the pendency of the renewals. Our decision here has no impact on the status of the renewals and does not constitute a ruling on the merits of any challenges to those renewals. Further, our decision here is conditioned upon the Applicants' agreement that any complaints currently pending against the stations

⁹ *Id.*

involved in this transaction remain pending and are in no way impacted by this transaction.

11. Accordingly for the reasons stated above, IT IS ORDERED THAT, the applications to transfer control of Fox Television Stations, Inc. from K. Rupert Murdoch to Fox Entertainment Group, Inc. ARE GRANTED subject to the condition set forth herein.

12. IT IS FURTHER ORDERED THAT, the request for a waiver for station KFCT(TV), Fort Collins, Colorado to continue to operate as a satellite of station KDVR(TV), Denver, Colorado, IS GRANTED.

13. IT IS FURTHER ORDERED THAT, a permanent waiver of the newspaper/broadcast cross-ownership rule to permit continued ownership of WNYW(TV) and The New York Post IS GRANTED.

14. Finally, IT IS ORDERED THAT, the request for a temporary waiver of the newspaper/broadcast cross-ownership prohibition to permit the continued ownership of WWOR-TV, Secaucus, New Jersey IS GRANTED for a twenty-four-month period from the date of consummation of the above transactions.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

EXHIBIT A

<u>Station</u>	<u>Community</u>	<u>ID No.</u>	<u>File No.</u>
WTTG(TV)	Washington, DC	22207	BTCCT-20050819AAF
WDCA(TV)	Washington, DC	51567	BTCCT-20050819AAG
WNYW(TV)	New York, NY	22206	BTCCT-20050819AAH
WWOR-TV	Secaucus, NJ	74197	BTCCT-20050819AAI
WFLD(TV)	Chicago, IL	22211	BTCCT-20050819AAJ
WPWR(TV)	Gary, IN	48772	BTCCT-20050819AAK
KTTV(TV)	Los Angeles, CA	22208	BTCCT-20050819AAL
KCOP-TV	Los Angeles, CA	33742	BTCCT-20050819AAM
KRIV(TV)	Houston, TX	22204	BTCCT-20050819AAN
KTXH(TV)	Houston, TX	51569	BTCCT-20050819AAO
KSTU(TV)	Salt Lake City, UT	22215	BTCCT-20050819AAP
KDVR(TV)	Denver, CO	126	BTCCT-20050819AAQ
KFCT(TV)	Ft. Collins, CO	125	BTCCT-20050819AAR
WFXT(TV)	Boston, MA	6463	BTCCT-20050819AAS
WHBQ-TV	Memphis, TN	12521	BTCCT-20050819AAT
WTFX-TV	Philadelphia, PA	51568	BTCCT-20050819ABD
WBRC(TV)	Birmingham, AL	71221	BTCCT-20050819ABG
WGHP(TV)	High Point, NC	72106	BTCCT-20050819ABJ
WDAF-TV	Kansas City, MO	11291	BTCCT-20050819ABT
KSAZ-TV	Phoenix, AZ	35587	BTCCT-20050819ACN
KUTP(TV)	Phoenix, AZ	68886	BTCCT-20050819ABB
KDFW(TV)	Dallas, TX	33770	BTCCT-20050819ABZ
KDFI(TV)	Dallas, TX	17037	BTCCT-20050819ACC

KTBC(TV)	Austin, TX	35649	BTCCT-20050819ACG
KTVI(TV)	St. Louis, MO	35693	BTCCT-20050819ABX
WTVT(TV)	Tampa, FL	68569	BTCCT-20050819ABK
WAGA(TV)	Atlanta, GA	70689	BTCCT-20050819ABM
WJBK(TV)	Detroit, MI	73123	BTCCT-20050819ABN
WITI(TV)	Milwaukee, WI	73107	BTCCT-20050819ABO
WJW(TV)	Cleveland, OH	73150	BTCCT-20050819ABR
KMSP-TV	Minneapolis, MN	68883	BTCCT-20050819AAU
WFTC(TV)	Minneapolis, MN	11913	BTCCT-20050819AAV
KFTC(TV)	Bemidji, MN	83714	BTCCT-20050819AAW
WRBW(TV)	Orlando, FL	54940	BTCCT-20050819AAX
WOFL(TV)	Orlando, FL	41225	BTCCT-20050819AAY
WOGX(TV)	Ocala, FL	70651	BTCCT-20050819AAZ
WUTB(TV)	Baltimore, MD	60552	BTCCT-20050819ABA